

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN RIGHTS

In the Matter of State of Minnesota by
Velma J. Korbel, Commissioner,
Department of Human Rights, and
Charlene Kulesa (Complainant-
Intervenor) v. John Dudziak

**FINDINGS OF FACT,
CONCLUSIONS AND ORDER**

The above matter came on for hearing before Administrative Law Judge Raymond R. Krause on January 7, 2008, at the Office of Administrative Hearings in St. Paul, Minnesota. The record closed upon submission of the applications for costs and attorney fees on January 14, 2008.

Angela Behrens, Assistant Attorney General, 900 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Department of Human Rights (the Department). Lael E. Robertson, Legal Aid Society of Minneapolis, 125 West Broadway, Suite 105, Minneapolis, Minnesota 55411, appeared on behalf of Complainant-Intervenor Charlene Kulesa. Respondent John Dudziak did not appear in person or by counsel.

STATEMENT OF ISSUES

1. Whether Respondent John Dudziak committed an unfair discriminatory practice by engaging in conduct that constituted sexual harassment against Complainant-Intervenor Charlene Kulesa (Kulesa) in connection with the rental of real property in violation of Minnesota Statutes section 363A.09, subdivision 1(2).

2. If Respondent has violated section 363A.09, what are the appropriate damages, remedies and other relief?

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On November 7, 2007, the Department sent by first class mail a copy of the Notice of and Order for Hearing, and the Complaint to the Respondent at 230 40th Avenue NE, Columbia Heights, MN 55421.¹

2. The Notice of and Order for Hearing noticed a prehearing conference in this matter at 1:30 p.m. on November 30, 2007, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

3. The Notice of and Order for Hearing specifically notified the Respondent that failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained Notice of Hearing and Complaint may be accepted as true, and its proposed action may be upheld.²

4. Respondent did not attend the prehearing conference, nor did Respondent contact the Administrative Law Judge before the prehearing conference to seek a continuance or request any other relief.

5. On December 12, 2007, the Administrative Law Judge issued and sent, via first-class mail, a Prehearing Order, scheduling the hearing for January 7, 2008, and an Order granting Complainant-Intervenor's Motion to Intervene.³

6. The Prehearing Order specifically notified the Respondent that failure to appear at the hearing may result in a finding that Respondent is in default, that the Department's allegations contained in the Notice of Hearing and the Complaint may be accepted as true, and its proposed action may be upheld.

7. The Respondent did not appear for the hearing on January 7, 2008, nor did he contact the Administrative Law Judge to request a continuance or other relief.

8. Because Respondent failed to appear for the prehearing conference or for the hearing, he is in default.

9. Pursuant to Minn. R. 1400.6000 the allegations contained in the Notice and Order for Hearing, the Complaint, and the Intervenor-Complaint, and the allegations set forth in the Intervenor's testimony are taken as true and incorporated by reference into these Findings of Fact and Conclusions.

¹ Certificate of Service by U.S. Mail (November 7, 2007).

² Notice of Hearing at 2.

³ Certificate of Service (December 12, 2007).

10. Charlene Kulesa is a female tenant who rented property owned and managed by Dudziak from August 2005 to July 2006.⁴

11. In August 2005, Kulesa signed a one-year lease for an apartment located in a multi-unit complex owned by Dudziak at 2600 Pleasant Avenue South in Minneapolis (the Pleasant Avenue apartment).⁵ She moved into the apartment in September 2005. The apartment complex is not owner-occupied.

12. In January 2006, Kulesa reported a plumbing leak and Dudziak responded. It was the first time she met him.⁶

13. In February and March 2006, Dudziak called Kulesa approximately twice a month and invited her out for dinner. He also left a Valentine's Day card on her piano in her apartment. Kulesa declined the invitations.⁷

14. On June 1, 2006, while following Kulesa upstairs to make a repair in her apartment, Dudziak put his arm around her and attempted to hug her. Kulesa pulled away. Once in the apartment, Dudziak requested she play the piano. Once seated at the piano, Dudziak approached her from behind and kissed her neck. He attempted to turn her face toward him. Kulesa pulled away from Dudziak, pushed him and told him "no." Dudziak then asked if he could call Kulesa. She told him "no," and that she was uncomfortable with his behavior. Dudziak said, "Oh, you are just too much," and told Kulesa he wanted to "bare his soul" to her. After she did not respond to him, Dudziak left.⁸

15. Dudziak called Kulesa everyday from June 5 to June 8, 2006. He left her long messages that implied they were currently in a romantic relationship. Dudziak sang into the voicemail and made such comments as, "I can't let this day go without calling you," "I can't sleep at night," and "I understand you now, and I feel as though this will bring us closer together."⁹

16. After receiving these messages, Kulesa became concerned for her safety and contacted the police. The police came to her apartment and listened to Dudziak's voicemail messages.

17. On June 9, 2006, Kulesa obtained a temporary restraining order against Dudziak because of his physical and sexual harassment and harassing phone calls. The order, which barred Dudziak from contacting Kulesa in any way, was served on Dudziak. He did not request a hearing on the order.¹⁰

⁴ Testimony of Charlene Kulesa.

⁵ Ex. 6.

⁶ Test. of C. Kulesa.

⁷ Test. of C. Kulesa

⁸ Test. of C. Kulesa

⁹ Test. of C. Kulesa; Ex. 1 (voice message from Dudziak left on June 8, 2006)

¹⁰ Test. of C. Kulesa; Ex. 2.

18. On June 11, 2006, Dudziak called Kulesa again, in violation of the restraining order, and told her he was going to her apartment with cheese and champagne.¹¹

19. For most of June 2006, Kulesa stayed overnight with friends and family to avoid being in her apartment alone because she feared for her safety.¹²

20. On or about July 8, 2006, Kulesa vacated the Pleasant Avenue apartment and moved into a new apartment. She incurred moving expenses and employment-related expenses in her search for a new apartment.¹³

21. After she left, she obtained a post office box so Dudziak would not know where she was living.¹⁴

22. In August 2006, Kulesa received two handwritten cards from Dudziak. The first card stated in part, "I don't think I can show your apartment. Sad, sad, sad, but this is what life drags us into. We don't want to get hert [sic], but in the long run were [sic] stronger for it."¹⁵

23. The second card stated in part, "It's like seen [sic] a ghost. What a supprise [sic]! You must off [sic] recovered from the ordeal."¹⁶

24. Dudziak refused to return Kulesa's security deposit for the apartment.¹⁷

25. Kulesa experienced significant emotional distress because of Dudziak's behavior and her work, schooling and peace of mind have suffered as a result. During the second half of 2006, Kulesa cut back her hours at work because she had problems staying focused and would cry unexpectedly. She stopped attending school because she was depressed. She found it difficult to concentrate and get up in the morning. She suffered physical problems including chest pains, shortness of breath and increased heart rate. She experienced at least two months of sleepless nights after she moved out of the Pleasant Avenue apartment. She was scared of Dudziak and took steps to hide her whereabouts. She moved in with a roommate because she was afraid to live alone. She was unable to sit or stand outside her apartment for fear of seeing Dudziak, and she was always "looking over her shoulder." She believes she will seek roommates in the future so she feels safe at home.¹⁸

¹¹ Test. of C. Kulesa; Ex. 1 (voice message from Dudziak left June 11, 2006).

Test. of C. Kulesa

¹³ Test. of C. Kulesa; Ex. 3.

¹⁴ Test. of C. Kulesa

¹⁵ Test. of C. Kulesa; Ex. 4

¹⁶ Test. of C. Kulesa; Ex. 5

¹⁷ Complaint ¶ 5.

¹⁸ Test. of C. Kulesa

26. Kulesa incurred actual damages in the amount of \$718.00, accounted for as follows:

- A. \$499 for rent paid in June 2006;
- B. \$189 for lost wages;
- C. \$30 for moving expenses.

27. In September 2006, Kulesa filed charges of discrimination with the Department against Dudziak.¹⁹

28. The Department investigated the charges of discrimination and found probable cause to believe that Dudziak had committed unfair discriminatory practices, and notified him of the probable cause determinations. The Department initiated this contested case pursuant to Minn. Stat. § 363A.28, subd. 6.²⁰

29. The Department attempted to conciliate the matter but Dudziak refused.²¹

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter pursuant to Minnesota Statute §§ 14.50 and 363A.29, subd. 1.

2. The Department has complied with all relevant substantive and procedural requirements of law and rule and the Complainant received proper notice of the hearing in this matter.

3. Respondent received due, proper and timely notice of the charges against him and of the time and place of the prehearing conference. This matter is therefore properly before the Commissioner and the Administrative Law Judge.

4. Under Minn. R. 1400.6000, a default occurs when a party fails to comply with any interlocutory orders of the Administrative Law Judge or fails to appear at the hearing without the consent of the Judge. Per the rule, a contested case may be decided adversely to a party who defaults. On default, the allegations set out in the Notice of and Order for Hearing and other pleadings may be taken as true or deemed proved without further evidence.

¹⁹ Complaint ¶ 7.

²⁰ Complaint ¶ 8.

²¹ Complaint ¶ 9.

5. Respondent, having failed to comply with a prehearing order of the Administrative Law Judge, having made no appearance at the hearing without the prior consent of the Judge, and not requesting a continuance prior to the hearing, is in default.

6. Pursuant to Minn. R. 1400.6000, the allegations contained in the charges of discrimination attached to the Notice of and Order for Hearing, the Complaint and the Intervenor Complaint are hereby taken as true.

7. John Dudziak is and was at all relevant times described herein the owner of real property located at 2600 Pleasant Avenue, Minneapolis, and a person with the right to sell, rent, or lease such property as described in Minn. Stat. § 363A.09, subd. 1.

8. The MHRA prohibits an owner or managing agent from discriminating against any person because of sex in the terms, conditions, or privileges of the rental of any real property or in the furnishing of facilities in connection therewith.²²

9. Dudziak's conduct toward Kulesa, including making phone calls, leaving voice messages and writing letters which implied they shared an intimate relationship, making physical contact, and violating the temporary restraining order, constitutes discrimination on the basis of sex, which violates Minn. Stat. § 363A.09, subd. 1(2). Specifically, Dudziak's conduct constituted sexual harassment and created a hostile housing environment.

10. Minn. Stat. § 363A.29 permits an award of compensatory damages up to three times the amount of actual damages sustained by the victim of discrimination. Kulesa has proven actual losses (June 2006 rent, lost wages, and moving expenses) attributable to Dudziak's discriminatory conduct in the amount of \$718.

11. Under Minn. Stat. § 363A.29, victims of discrimination are entitled to compensation for mental anguish and suffering from discriminatory practices. In this case, Kulesa suffered mental anguish and suffering as a result of Dudziak's conduct and therefore is entitled to compensation for the mental anguish she sustained.²³

²² Minn. Stat. § 363A.09; see also *Harmon v. Mattson*, 1999 WL 1057236 (Minn. App. 1999). In *Harmon*, the Court of Appeals analyzed a claim of gender discrimination in housing and held that under the Fair Housing Act, a person is guilty of gender discrimination by treating one gender less favorably or by sexual harassment. 1999 WL 1057236 at *4. The court, citing *Honce v. Vigil*, 1 F.3d 1085, 1088 (10th Cir. 1993), held that sexual harassment in housing can be proven under quid pro quo harassment and hostile environment harassment.

²³ See *Bradley v. Hubbard Broadcasting, Inc.*, 471 N.W.2d 670, 677 (Minn. App. 1991) (a court may award damages for mental anguish without evidence of severity or physical injury); *Gillson v. State*, 492 N.W.2d 835, 842 (Minn. App. 1992) (plaintiff may establish mental anguish by subjective testimony).

12. Under Minn. Stat. §§ 363A.29, subd. 4, and 549.20, punitive damages may be awarded for discriminatory acts where there is clear and convincing evidence that the acts show a deliberate disregard for the rights or safety of others. In this case, Kulesa is entitled to punitive damages.

13. Minn. Stat. § 363A.29, subd. 4, requires the award of a civil penalty to the State when the respondent is found to have violated certain provisions of the MHRA, including section 363A.09.

14. Minn. Stat. § 363A.29, subd. 4, authorizes the Administrative Law Judge to award reasonable attorney's fees to a party who has suffered discrimination. In this case, the ALJ concludes that such an award is merited.

15. Minn. Stat. § 363A.29, subd. 11, requires the Administrative Law Judge to order a respondent who is determined to have engaged in an unfair discriminatory practice to reimburse the Department for all appropriate litigation and hearing costs unless payment of the costs would impose a financial hardship on the respondent. Because Respondent has refused to participate in this process, there is no evidence concerning his financial ability other than the market value of the rental property.²⁴ The ALJ concludes that, in the absence of any other evidence, this demonstrates sufficient financial ability.

16. Pursuant to Minn. Stat. § 363A.09, subd. 5, an administrative law judge may impose such other relief that is deemed just and reasonable. In this case, Respondent has refused to participate in the process, has not shown any indication that he realizes the conduct he engaged in is inappropriate and is likely to repeat this conduct with others. The Department has, therefore, requested that, in order to prevent further instances of unlawful conduct, Respondent be required to have a professional management company deal directly with his tenants. This is a reasonable request under the circumstances.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

1. Respondent shall cease and desist from engaging in unfair discriminatory practices.

2. Respondent shall hire a professional management company, to be approved by the Department, to oversee and conduct the operations at the Pleasant Avenue apartment, including maintenance work, caretaking, rent

²⁴ Ex. 6.

collection, and any and all personal communication with tenants for as long as Dudziak owns the property.

3. Within 30 days, Dudziak shall remit to Kulesa \$2,154 in trebled compensatory damages, pursuant to Minn. Stat. § 363A.29, subd. 4.

4. Within 30 days, Dudziak shall remit to Kulesa \$10,000 for emotional distress, mental anguish and suffering, pursuant to Minn. Stat. § 363A.29, subd. 4.

5. Within 30 days, Dudziak shall remit a civil penalty to the Minnesota State Treasurer in the amount of \$8,500, for deposit in the General Fund of the State of Minnesota, pursuant to Minn. Stat. § 363A.29, subd. 4.

4. Within 30 days, Dudziak shall remit to Kulesa punitive damages in the amount of \$8,500, pursuant to Minn. Stat. § 363A.29, subd. 4.

5. Within 30 days, Dudziak shall remit attorney's fees in the amount of \$12,607.70 to Kulesa's attorney, Lael Robertson at Legal Aid Minneapolis.

6. Dudziak shall reimburse the Department of Human Rights for all appropriate litigation and hearing costs, pursuant to Minn. Stat. § 363A.29, subd. 11.

Dated: January 25, 2008

s/Raymond R. Krause
RAYMOND R. KRAUSE
Chief Administrative Law Judge

NOTICE

This order is the final decision in this case under Minn. Stat. § 363A.29. Under Minn. Stat. § 363A.30, the Commissioner of the Department or any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. ch. 14.

MEMORANDUM

Intervenor-Complainant Charlene Kulesa asserts that while a tenant at an apartment building owned by Respondent John Dudziak, he subjected her to unwanted sexual and romantic advances and persistent and harassing conduct of a sexual nature. She alleges the harassment created a hostile environment and interfered with her housing in violation of the Minnesota Human Rights Act, specifically Minn. Stat. § 363A.09.

Kulesa prays for judgment against Respondent for damages pursuant to Minn. Stat. § 363A.29, including compensatory damages, statutory damages, punitive damages, a civil penalty, and attorney's fees. Respondent has not participated in the proceedings and he is in default. Because Respondent is in default, all the allegations set forth in the Complaint, the Intervenor-Complaint and the testimony given at the hearing are taken as true. The Complainants have proven by a preponderance of the evidence that Respondent discriminated against Kulesa on the basis of sex in violation of section 363A.09.

The relief afforded to a victim of discrimination under the MHRA contemplates compensating the victim to restore her, as nearly as possible, to the same position she would have attained had there been no discrimination.²⁵ Complainant in this case has suffered substantial anguish and distress because of Respondent's unwanted attention and interference in her personal life. Due to the persistent nature of Respondent's conduct and the fact that he knew where she lived and had control over her apartment, Kulesa suffered anxiety and emotional distress. She could not continue with her work or school as she intended. She stayed with others for the month of June 2006 and moved to another apartment in July 2006 because she felt unsafe in her Pleasant Avenue apartment. Property owners and landlords are expected to know of their obligation under the Human Rights Act to treat tenants in a non-discriminatory fashion.

²⁵ *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 627 (Minn. 1998).

It is appropriate under the circumstances to award Kulesa treble compensatory damages for her June 2006 rent, lost wages, and moving expenses.²⁶ She is also entitled to damages for the mental anguish and emotional turmoil she has experienced as a result of her discriminatory treatment.²⁷

Taking into the consideration the factors set forth in *Hensley v. Eckerhart*,²⁸ the Administrative Law Judge concludes that it is appropriate in this case to award attorney's fees based on upon 68.1 hours of attorney time and to calculate the fees for Lael Robertson's time at \$185 per hour for work performed from June 16, 2006, to January 10, 2008. This amount reflects a reasonable number of hours of attorney work billed at a reasonable rate to represent Kulesa in this matter. Accordingly, Robertson shall be reimbursed \$12,607.70.²⁹ Similarly, the State is entitled to reimbursement for the costs of the services rendered by the Administrative Law Judge in this matter.

Punitive damages are also appropriate under Minn. Stat. § 363A.29. The standards set forth in Minn. Stat. § 549.20 require that there be clear and convincing evidence that Respondent deliberately disregarded Kulesa's rights and safety. While in her apartment, Respondent approached her from behind and kissed her neck. He seemed undeterred by Kulesa's repeated rejections, and the letters he sent her, in violation of the restraining order, intimated they were in a personal relationship. He also entered her apartment without authorization and left items of a "romantic" nature for her to find. The award of punitive damages is appropriate.³⁰

²⁶ See *Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 274 (Minn. 1995) (holding that under the MHRA, the trial court is vested with the discretion to multiply damages).

²⁷ In her prayer for relief, Kulesa requested that her damages for mental anguish be trebled. Under section 363A.29, subd. 4, however, only actual damages may be trebled:

[T]he administrative law judge shall order the respondent to pay an aggrieved party, who has suffered discrimination, compensatory damages in an amount up to three times the actual damages sustained. In all cases, the administrative law judge may also order the respondent to pay an aggrieved party, who has suffered discrimination, damages for mental anguish or suffering and reasonable attorney's fees, in addition to punitive damages in an amount not more than \$8,500.

See also *Ray v. Miller Meester Advertising, Inc.*, 664 N.W.2d 355, 370 (Minn. App. 2003) (disallowing treble damages for mental anguish under Minnesota Statute § 363.071, subd. 2 (the predecessor to § 363A.29, subd. 4) ("the language of [the MHRA] does not include emotional damages within the damages permitted to be trebled").

²⁸ 461 U.S. 424, 434 (1983).

²⁹ See *Shepard v. City of St. Paul*, 380 N.W.2d 140, 143 (Minn. App. 1985) (attorney's fees must be determined in accordance with the lodestar method that multiplies the reasonable hourly rate, based on prevailing market rates in the community, with the reasonable number of hours expended).

³⁰ See *Kay v. Peter Motor Co.*, 483 N.W.2d 481, 485 (Minn. App. 1992) (affirming punitive damage award based on the duration of the harassment, defendant's knowledge, defendant's deliberate disregard for plaintiff's rights, the specific incidents of harassment, and defendant's financial condition).

Taking into account the seriousness and extent of the violation, the public harm occasioned by the violation, and the fact that the violation was intentional, Respondent should pay a civil penalty to the State in the amount of \$8,500. Because Respondent did not appear in this matter or offer evidence of hardship, it is impossible to accurately assess his financial resources in arriving at the amount of the civil penalty. The ALJ is forced to conclude that the penalties are reasonable based on the value of the rental property owned by Respondent.

The fact that Respondent did not respond to the discrimination claim, the attempt at mediation, the prehearing conference or the hearing, leaves the ALJ to conclude that Mr. Dudziak does not acknowledge the inappropriateness of his actions and may be at risk for future violations. The Department's request that Mr. Dudziak be required to distance himself from his tenants by means of a professional management company is reasonable and, therefore, granted.

R. R. K.